

Before The
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)

Advanced Television Systems)
and Their Impact Upon the)
Existing Television Broadcast)
Service)

MM Docket No. 87-268

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To: The Commission

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

**SUPPLEMENT TO OPPOSITION OF AK MEDIA GROUP,
INC. TO PETITIONS FOR RECONSIDERATION
OF SANGRE de CRISTO COMMUNICATIONS,
INC. AND CORDILLERA COMMUNICATIONS, INC.**

AK Media Group, Inc. ("AK Media"), by and through its undersigned counsel and pursuant to the Commission's Rules, hereby supplements its opposition in part to the Petition for Reconsideration filed by Cordillera Communications, Inc. ("Cordillera") and its opposition to the Petition for Reconsideration filed by Sangre de Cristo Communications, Inc. ("SCC") in order to address matters raised in the Joint Supplement to Petition for Reconsideration filed by SCC and Cordillera on August 22, 1997. In further support of its opposition, AK Media states as follows:

1. AK Media is the licensee of Television Station KKTV, NTSC Channel 11, DTV Channel 10, Colorado Springs, Colorado. KKTV competes with other television stations, including television station KOAA-TV, in the Colorado Springs-Pueblo Designated Market Area ("DMA").

2. SCC is the licensee of Television Station KOAA-TV. KOAA-TV is assigned NTSC Channel 5. The Table of Allotments adopted by the Commission in the Sixth Report and Order, MM Docket No. 87-268, FCC 97-115 (released April 21, 1997), assigned KOAA-TV DTV Channel 27. Cordillera is the parent company of SCC.

3. On June 13, 1997, SCC and Cordillera filed petitions for reconsideration which asked the Commission to reconsider the Sixth Report and Order so as to approve a relocation of KOAA-

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TV's DTV transmitter site from Baculite Mesa to Cheyenne Mountain. The proposed Cheyenne Mountain site is over 30 miles from the Baculite Mesa site specified in the Sixth Report and Order.

4. AK Media in its Opposition opposed the petitions for reconsideration of SCC and Cordillera. AK Media demonstrated that the SCC and Cordillera petitions for reconsideration were simply the latest in a long series of attempts by the owners of KOAA-TV to move KOAA-TV's transmitter from a site on Baculite Mesa near Pueblo, KOAA-TV's community of license, to a site on Cheyenne Mountain near Colorado Springs, while evading the Commission's Rules and policies with respect to a station's continuing obligation to maintain service to its viewing audience. AK Media pointed out that nowhere in their petitions for reconsideration did SCC and Cordillera provide the Commission with any information on gains and losses to KOAA-TV's DTV service area which would result if the Commission were to approve the relocation of KOAA-TV's DTV transmitter site from Baculite Mesa to Cheyenne Mountain.

5. In their Joint Reply to AK Media's Opposition, SCC and Cordillera denied that the proper way to achieve a relocation of KOAA-TV's DTV operation from Baculite Mesa to Cheyenne Mountain is to file an FCC Form 301. SCC and Cordillera also complained that AK Media had no basis for claiming that the move of KOAA-TV's operations might result in a loss of service. The SCC and Cordillera Joint Reply also failed to provide the Commission with any information regarding service gains or losses which would result if the Commission were to grant the petitions for reconsideration.

6. SCC and Cordillera now have filed a Joint Supplement to Petition for Reconsideration, which includes an updated engineering statement. In that Joint Supplement and updated engineering statement, SCC and Cordillera still have failed to provide the Commission with any information about the service gains and losses which would result if the Commission were to approve the proposed relocation of KOAA-TV's DTV transmitter site to Cheyenne Mountain.

7. In their Joint Supplement, SCC and Cordillera claim that permitting KOAA-TV to move its DTV transmitter site ". . . would permit KOAA(TV) to maximize its DTV service to Pueblo

and Colorado Springs and to compete on an even footing with other television stations in the same market." Joint Supplement at 2. However, the engineering statement attached to the Joint Supplement does not even purport to address the question of whether the proposed transmitter relocation would "maximize" KOAA-TV's DTV service to Pueblo and Colorado Springs. Therefore, SCC and Cordillera have not provided any substantiation for their claim that the proposed transmitter site move would enable KOAA-TV to "maximize" its DTV service.

8. As AK Media noted in its Opposition, the Commission has made it clear that "... once in operation a station has an obligation to maintain service to its viewing audience, and that the withdrawal or downgrading of service is justifiable only if offsetting factors associated with the proposal establish that the public interest will be benefitted." KTVO, Inc., 57 RR.2d 648, 649 (1984). This basic Commission holding has been interpreted to mean that any loss of service is "... *prima facie* inconsistent with the public interest." Coronado Communications, 8 FCC Rcd 159, 71 RR2d 1250, 1254 (Chief, Video Serv. Div. 1992). AK Media's Opposition pointed out that, in another proceeding involving SCC, the Commission recently denied a request for a waiver of the minimum separation requirements and gave as one of the reasons for the denial the fact that the applicants' proposal would result in as many as 20,000 people losing their primary (*i.e.*, full service, protected) commercial off-air service if the waiver were granted. Amendment of Section 73.606(b), Table of Allotments TV Broadcast Stations (Pueblo, Colorado), 11 FCC Rcd 19649 (1996), appeal pending, United States Court of Appeals for the District of Columbia Circuit Case No. 97-1030.

9. As noted by AK Media in its Opposition, the prior history of SCC's proposed channel swap with the University of Southern Colorado, which the Commission refused to approve, suggests why SCC and Cordillera have attempted to ignore the service loss issue: SCC's earlier unsuccessful attempt to relocate KOAA-TV to a transmitter site on Cheyenne Mountain would have resulted in a loss of primary commercial off-air service to as many as 20,000 people. *Id.* It is reasonable to assume that if the Commission were to approve the proposed relocation of KOAA-TV's transmitter site from Baculite Mesa to Cheyenne Mountain there would be a significant loss of primary over-the-

air commercial service to a large number of current viewers of KOAA-TV. As noted above, such losses are *prima facie* not in the public interest.


10. The simple fact is that, even if the Commission were willing to consider the SCC and Cordillera request to relocate KOAA-TV's DTV transmitter site over 30 miles in a petition for reconsideration instead of in a proceeding to consider an FCC Form 301, the Commission still lacks critical information needed to determine whether the relocation would be in the public interest. Such a public interest consideration simply cannot be made in the absence of data establishing the service gains and losses which would result if the relocation were permitted. The fact that SCC and Cordillera have resolutely and repeatedly failed to provide this basic information strongly suggests that SCC and Cordillera already know that their proposal to relocate KOAA-TV's DTV transmitter site would result in substantial service losses. SCC and Cordillera have the burden of demonstrating that the proposed relocation is in the public interest; by failing to provide the Commission with the necessary information on the service gains and losses, they also have failed to carry their burden.

11. Therefore, the SCC and Cordillera petitions for reconsideration must be denied. A Petition for Reconsideration and amendment of the DTV Table of Allotments is not a permissible way to accomplish a relocation of more than 30 miles of the transmission facilities of a television station. The Sixth Report and Order authorized television stations to locate their DTV transmitting facilities at any site within a three mile radius of their existing antenna site coordinates. Sixth Report and Order at ¶ 102. The only way for SCC and Cordillera to obtain Commission consideration of a proposed relocation of KOAA-TV's DTV transmitter site from Baculite Mesa to another location more than 30 miles away on Cheyenne Mountain is to file an FCC Form 301 Application for a change in facilities and to provide the Commission with the detailed information required for consideration of such an application, including information on any losses of service which would result from the proposed relocation of KOAA-TV's DTV transmitter site. Then and only then can the Commission determine whether the proposed relocation of KOAA-TV's DTV transmitter site would result in service losses and whether such a relocation would be in the public interest.

WHEREFORE, AK Media Group, Inc. respectfully requests that the Commission deny the Petition for Reconsideration filed on June 13, 1997 by Sangre de Cristo Communications, Inc. and that the Commission also deny the Petition for Reconsideration filed on July 13, 1997 by Cordillera Communications, Inc., to the extent that the Cordillera Petition seeks amendment of the DTV Table of Allotments in Table I of Appendix B of the Sixth Report and Order and to the extent that it requests in this proceeding that the Commission provide greater protection for LPTV and translator stations.

Respectfully Submitted,

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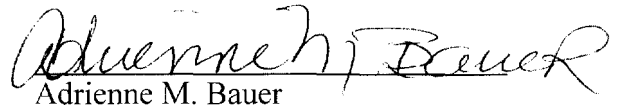
Dated: September 3, 1997

CERTIFICATE OF SERVICE

I hereby certify that on September 3, 1997, a true copy of the foregoing Supplement to Opposition of AK Media Group, Inc., was mailed, first class U.S. mail postage pre-paid, to the following:

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